



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[EPA-HQ-OPP-2017-0543; FRL-9803-01-OCSP]

Pesticides; Agricultural Worker Protection Standard; Revision of the Application

Exclusion Zone Requirements; Court Order; Stay of Effectiveness

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; court-ordered stay of effectiveness.

SUMMARY: On December 28, 2020, the United States District Court for the Southern District of New York issued an order in the case of *State of New York et al v. United States Environmental Protection Agency*, which resulted in a stay of the effectiveness for an October 30, 2020 final rule (2020 AEZ Rule) amending certain provisions of EPA's Agricultural Worker Protection Standard (WPS) regulations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) related to the application exclusion zone (AEZ). Subsequent orders have extended this stay of the effectiveness. Although the text of the Code of Federal Regulations reflects the amendments to the AEZ provisions under the 2020 AEZ Rule, the district court's stay orders have prevented those amendments from going into effect. Accordingly, the regulatory text prior to the amendments provides the operative regulatory language during the current stay and any future extensions of the stay.

DATES: As of February 15, 2022, the effectiveness of the final rule published at 85 FR 68760 (October 30, 2020) is stayed by court order until August 22, 2022. EPA intends to publish another document in the **Federal Register** to address the status of the 2020 final rule if the stay of effectiveness expires or is lifted, but the Agency does not intend to publish additional **Federal Register** documents to announce any additional court orders entered to further stay the effectiveness of the 2020 final rule.

FOR FURTHER INFORMATION CONTACT: Carolyn Schroeder, Pesticide Re-Evaluation

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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this announcement affect me?

You may be interested in this announcement if you work in or employ persons working in crop production agriculture where pesticides are applied. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them.

Potentially affected entities may include:

- Agricultural Establishments (NAICS code 111000).
- Nursery and Tree Production (NAICS code 111421).
- Timber Tract Operations (NAICS code 113110).
- Forest Nurseries and Gathering of Forest Products (NAICS code 113210).
- Farm Workers (NAICS codes 11511, 115112, and 115114).
- Pesticide Handling on Farms (NAICS code 115112).
- Farm Labor Contractors and Crew Leaders (NAICS code 115115).
- Pesticide Handling in Forestry (NAICS code 115310).
- Pesticide Manufacturers (NAICS code 325320).
- Farm Worker Support Organizations (NAICS codes 813311, 813312, and 813319).
- Farm Worker Labor Organizations (NAICS code 813930).
- Crop Advisors (NAICS codes 115112, 541690, 541712).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this announcement, identified by docket identification (ID) number EPA-HQ-OPP-2017-0543, is available at <https://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566-1744. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

II. Announcement of Court Order

On December 28, 2020, the United States Southern District of New York issued an order granting plaintiffs' request for a temporary restraining order (TRO) and injunctive relief in the case of *State of New York et al v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642 (Ref. 1). The Court's order stayed the December 29, 2020 effective date of the 2020 AEZ Rule (Ref. 2) and enjoined all EPA authorities who would otherwise take action to make the 2020 AEZ Rule effective from doing so (Ref. 1). Following the December 2020 Order, the Court has issued several additional stipulated orders further extending the preliminary injunction staying the effectiveness of the 2020 AEZ Rule (Refs. 3-10). The most recent stipulated order, issued on February 15, 2022, continues the stay of the effectiveness of the 2020 AEZ Rule through August 22, 2022. Additional stay orders may be entered in the future.

III. Current Status of the WPS in Light of Court Orders

In November 2015, the Agency finalized amendments to the WPS that included the establishment of the AEZ and related provisions (2015 WPS) (Ref. 11). The text of the 2015 WPS and the AEZ provisions within the rule is available at 80 FR 67496 (November 2, 2015) (FRL-9931-81). As described above, court orders have stayed the effectiveness of the 2020 AEZ Rule, which would have modified the AEZ provisions in the 2015 WPS, until August 22, 2022.

Additional court orders may extend this stay.

Because the 2020 AEZ Rule has not taken effect, the AEZ provisions from the 2015 WPS remain in effect and will continue to remain in effect in the event of future stays of the effectiveness. Accordingly, any enforcement activity by EPA officials and other authorities tasked with enforcing the WPS should be conducted based on the AEZ requirements in the 2015 WPS, until such time as a subsequent rule goes into effect.

IV. Status of Rulemaking

EPA has commenced a new rulemaking effort to address the AEZ and anticipates issuing a proposal in 2022, which is identified in the Semi-Annual Unified Regulatory Agenda under RIN 2070-AK92. As part of the future proposed rulemaking, EPA intends to thoroughly review the 2020 AEZ Rule to determine the extent to which it is consistent with the policies established in Executive Order 13990, entitled “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis” (86 FR 7037, January 25, 2021). Any final rule resulted from this rulemaking process may modify content of the 2015 WPS, the 2020 AEZ Rule, or both.

V. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, December 28, 2020). Amended Order Re: Complaint for Declaratory and Injunctive Relief.

2. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Revision of the

Application Exclusion Zone Requirements; Final Rule. **Federal Register**. 85 FR 68760, October 30, 2020 (FRL-10016-03).

3. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, January 19, 2021). Stipulation and Consent Order Extending Stay and Entering Injunction.

4. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, February 10, 2021). Stipulation and Consent Order Further Extending Stay and Extending Injunction.

5. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, April 12, 2021). Second Stipulation and Consent Order Further Extending Stay and Extending Injunction.

6. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, June 14, 2021). Third Stipulation and Consent Order Further Extending Stay and Extending Injunction.

7. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, August 12, 2021). Fourth Stipulation and Consent Order Further Extending Stay and Extending Injunction.

8. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, October 12, 2021). Fifth Stipulation and Consent Order Further Extending Stay and Extending Injunction.

9. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, December 14, 2021). Sixth Stipulation and Consent Order Further Extending Stay and Extending Injunction.

10. *State of New York et al. v. United States Environmental Protection Agency*, Case No. 1:20-cv-10642; (United States Southern District of New York, February 15, 2022). Seventh Stipulation and Consent Order Further Extending Stay and Extending Injunction.

11. EPA. Pesticides; Agricultural Worker Protection Standard Revisions; Final Rule.

Federal Register. 80 FR 67496, November 2, 2015 (FRL-9931-81).

Authority: 7 U.S.C. 136-136y.

Dated: May 5, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

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